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IN THE

Supreme Court of the United States

October Term, 1964

No. 515

HEART OF ATLANTA MOTEL, INC.,

Petitioner,

vs.

UNITED STATES,

Respondent.

On Appeal From the United States District Court for the Northern District of Georgia.

BRIEF OF THE STATE OF CALIFORNIA AS AMICUS CURIAE.

Interest of Amicus Curiae.

Because the policy of the State of California against discrimination on the basis of race, color, religion, national origin or ancestry has long been established by all branches of its government, and because the Civil Rights Act of 1964 has a substantial impact upon the rights of California's citizens in their interstate travels, the Attorney General of the State of California deems it appropriate to present this brief *amicus curiae* in support of the position of the United States.

Article I, section 1 of the California Constitution declares that:

> "All men are by nature free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty; acquiring, possessing, and protecting property; and pursuing and obtaining safety and happiness."

Under this constitutional mandate, California's legislative, judicial and executive branches pursue a policy consonant with promotion of equal opportunity in the enjoyment of these rights for all of its citizens. California legislation promotes the state's public policy against racial and religious discrimination in the fields of employment[1] and housing,[2] and in the conduct of all business establishments of every kind whatsoever.[3] Concern with equal access to places of public accomodation for all persons—the subject matter of these proceedings—may be traced in California back to the last century.[4]

The public policy of state and nation against racial discrimination has been recognized and strengthened by the decisions of California's courts.[5] It has been of

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[1]Fair Employment Practice Act, Cal. Labor Code §§ 1410-1432.

[2]Rumford Fair Housing Act, Cal. Health & Safety Code §§ 35700-35744.

[3]Unruh Civil Right Act, Cal. Civil Code §§ 51-52.

[4]Cal. Stats. 1893, Ch. 185, p. 220; Cal. Stats. 1897, Ch. 108, p. 137.

[5]*E.g., Jackson v. Pasadena City School Dist.*, 59 Cal. 2d 876 382 P. 2d 878 (1963); *Burks v. Poppy Construction Co.*, 57 Cal. 2d 463, 370 P. 2d 313 (1962); *Hughes v. Superior Court*, 32 Cal. 2d 850, 198 P. 2d 885, aff'd 339 U. S. 460 (1949); *James v. Marinship Corp.*, 25 Cal. 2d 721, 155 P. 2d 329 (1944); *Piluso v. Spencer*, 36 Cal. App. 416 (1918).

equal concern to the executive departments of the state[6] and to its chief law officer.[7]

The State of California is as jealous of the prerogatives of statehood under our federal system as any state in the union. We believe that Congress wisely deferred to local authority—insofar as it was both practicable and consistent with the national interest to do so—in the Civil Rights Act of 1964.[8]

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[6]"This nation and state were founded on the principle that all men are created free and endowed with equal rights to secure the blessings of democracy without discrimination.

"To carry out the clear mandate of our Federal and State Constitutions, the Legislature has enacted laws to prohibit discrimination in employment, housing, schools, and places of business. These laws, enunciating the State's public policy of nondiscrimination, have been supported by executive action and upheld by judicial decree.

"But the laws, court edicts, and official pronouncements are only a beginning. If discrimination and segregation have been legally forbidden, a more subtle, but equally restrictive, *de facto* discrimination exists and grows. Justice demands that we not only banish old forms of discrimination but that we act affirmatively to assure those who contribute fully to our society a chance to share fully in its rewards.

"To meet the obligation of the State and under the authority vested in me by the Constitution, I hereby proclaim the following Code of Fair Practices to be the official policy of the Executive Branch of the State of California."

Introductory statement to *"Governor's Code of Fair Practices,"* signed by Governor Edmund G. Brown on July 24, 1963.

[7]See, *e.g., Don Wilson Builders v. Superior Court,* 220 Cal. App. 2d 77 (1963).

[8]Civil Rights Act of 1964, Sections 204(c) and 706(b):

"Sec. 204. . . .

"(c) In the case of an alleged act or practice prohibited by this title which occurs in State, or political subdivision of a State, which has a State or local law prohibiting such act or practice and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, no civil action may be brought under subsection (a) before the expiration of

We recognize, however, that the Civil Rights Act of 1964 deals with a matter of national concern in which the Congress of the United States has a legitimate and pre-eminent interest. In such a situation, where some states choose not to act or to act in a manner inconsistent with the national welfare, the interests of both state and nation demand that our federal government remain free to act.

California's concern with the rights of her citizens cannot be limited by her own borders. California, though a sovereign state, is proclaimed by its constitution an inseparable part of the American union.[9] Over one hundred years of history reinforce that proclamation. California's economy and people are firmly welded into the single economic and social unit which constitutes our great nation.

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thirty days after written notice of such alleged act or practice has been given to the appropriate State or local authority by registered mail or in person, provided that the court may stay proceedings in such civil action pending the termination of State or local enforcement proceedings."

"Sec. 706. . . .

"(b) In the case of an alleged unlawful employment practice occurring in a State, or political subdivision of a State, which has a State or local law prohibiting the unlawful employment practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, no charge may be filed under subsection (a) by the person aggrieved before the expiration of sixty days after proceedings have been commenced under the State or local law, unless such proceedings have been earlier terminated, provided that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective date of such State or local law. . . ."

[9]Cal. Const. Art. I, § 3.

California industry is a prime recipient of government contracts,[10] which can necessitate travel to the nation's capital or defense installations in other states. Californians serve in the armed forces of our nation, which frequently requires them to travel through and reside in sister states during their period of service.[11] Citizens of California, in the course of their business

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[10]According to information received by our office from the California State Office of Planning, Department of Defense prime contract awards for the fiscal year 1962-63 amounted to $5,888,357,000 and NASA first tier prime contracts for the period January 1962 through October 1963 totaled $493,259,677.

[11]".

"Off-base discrimination against minority groups within the Armed Forces generates a serious morale problem for the military. In consideration of the purpose and the mission of the Military Establishment, it is neither feasible, expedient, nor justifiable to assign personnel to duty stations on the basis of race, color, or national origin. Consequently, servicemen belonging to minority groups have been forced to accept a set of standards, and have been denied privileges enjoyed by other military personnel in those areas where local custom supports discriminatory practices.

". . . Military personnel, like other members of the American public, must rely upon the availability of public accommodations when traveling to new duty stations, when living in a civilian community adjacent to their duty station, or when on temporary duty in connection with military maneuvers. Unlike most civilians, military personnel are required to move their families upon completion of a 3- to 4-year tour of duty. As a matter of military necessity, the serviceman moves when and where ordered. When servicemen, who are members of a minority group, encounter discriminatory practices in the course of a move, or upon arrival at their new duty station, they are required to assume additional problems which constitute an unnecessary and unjustifiable burden. The morale and discipline caused by such inequities can only have an adverse effect on military operations."

Statement by General Counsel of the Department of Defense, Report of the Committee on Commerce, United States Senate, *Civil Rights—Public Accommodations*, S. Rep. No. 872, 88th Congress, 2d Session pp. 27-28 (1964).

and employment, must utilize places of public accommodation throughout the United States.[12]

Of no less significance to our national well-being is interstate travel for educational and recreational purposes, including visitation of our great national shrines located in other states.

Students and scholars from California may visit the Georgia Institute of Technology or the University of Georgia. California families may spend their summer in the 230-year old city of Savannah, or visit the shrine to President Roosevelt at Warm Springs, or travel to Chickamauga and Chattanooga National Military Park—the oldest and largest historical area established by the federal government in the United States. This commerce in people binds our nation together in a way that commerce in products alone could never do.

The right of California's citizens to move freely among the several states is not only a necessary and proper subject of the exercise of Congress' power under the commerce clause[13] but a basic and essential attribute of United States Citizenship.[14] The inability of the residents of one state to obtain satisfactory and convenient accommodations in another state solely because

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[12]On July 1, 1964, 17,137 corporations had payroll or property in California and at least one other state according to information furnished to us by the Franchise Tax Board of the State of California.

One of these corporations was Interstate Hosts, Inc., which owns and operates a restaurant within the Heart of Atlanta Motel and has its offices in Los Angeles, California (Plaintiff's Statement of Issues, R. 16). A Negro employee of this corporation from Los Angeles visiting the Atlanta restaurant for business purposes could not stay in the Heart of Atlanta Motel.

[13]*Edwards v. California*, 314 U. S. 160 (1941).

[14]*Crandall v. Nevada*, 73 U. S. (6 Wall.) 35 (1867). *Cf. Edwards v. California*, *supra*, at 177 [Concurring opinion].

of their race or color clearly interferes with their constitutionally protected right as citizens of the United States to travel among the several states.

Yet California, acting alone, cannot adequately protect her citizens or facilitate their travel once they leave the state. Only the United States government can strike down such barriers to interstate commerce.

California has another concern with the national impact of the Civil Rights Act of 1964 beyond that of its effect on her own citizens in their interstate travels. The highways of America carry commerce in two directions. They bring visitors and new residents to California, even as they take residents of California to visit other states.[15] California is not unacquainted with both the blessings and the problems which such commerce brings.[16]

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[15]In 1963, 2,771,712 automobiles with foreign license plates carrying 7,374,890 passengers passed through border quarantine stations according to information furnished to us by the Bureau of Plant Quarantine, California State Department of Agriculture. Figures for 1964 are running substantially higher. The average yearly net increase in California residents resulting from inmigration from other states was 271,400 according to information furnished to our office from the California State Office of Planning. In addition, in September of 1963, California had an estimated population of 15,600 migratory farm workers who had come from other states.

[16]A generation ago California experienced a wave of immigration of tenant farmers and sharecroppers from the South and Southwest springing from the affects of the depression and the dust bowl. One view of the undeniable problems they brought with them is graphically presented in appellee's argument in the *Edwards* case, *supra*, summarized at pp. 167-68.

Last year, President Kennedy presented another aspect of the problem in his speech on June 6 at San Diego State College on "Our Educational Deficiencies and the Remedy."

> ". . . American childern today do not yet enjoy equal educational opportunities for two primary reasons: One is economic and the other is racial. . . . It does no good, as

When travelers—both transient guests and new residents—enter California, the government of this state is properly concerned with the place which these newcomers find in the state's life. But this, in turn, may be largely determined by the conditions under which they lived prior to coming to California.

Those subjected throughout their lives to discrimination based solely on their race or color bring with them the handicaps which discrimination imposes. The supreme courts of both California[17] and the United States[18] have recognized that "separate but equal" education is inherently inferior education. The Supreme Court of California has pointed to the problems of anti-social behavior[19] and crime, disease and immorality[20] stemming from segregated housing.

Discrimination in the use of the services and facilities of places of public accommodation may not be the

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you in California know better than any, to say that is the business of another state. It is the business of our country. These young, uneducated boys and girls know no state boundaries and they come West as well as North and East. They are your citizens as well as citizens of this country."

The Burden and the Glory: The Hopes and Purposes of President Kennedy's Second and Third Years in Office as Revealed in his Public Statements and Addresses. (New York: Harper & Row, 1964), page 260.

The lesson is clear. Great problems in any part of the nation cannot be fenced out or forgotten by the rest of the nation. Where individual states cannot or will not act, the United States must be able to do so.

[17]*Jackson v. Pasadena City School Dist.*, 59 Cal. 2d 876, 382 P. 2d 878 (1963).

[18]*Brown v. Board of Education*, 347 U. S. 483 (1954).

[19]*Jackson v. Pasadena City School Dist.*, 59 Cal. 2d at 881, 382 P. 2d at 881.

[20]*Burkes v. Poppy Construction Co.*, 57 Cal. 2d 463, 471, 370 P. 2d 313, 317 (1962).

root of those evils to man and society which spring from denial of equal opportunity based on race or color. But who can fully measure the extent of the psychological injury which it works, or the disregard for fundamental principles of human dignity and decency which it inculcates?

Racial discrimination leaves its mark not alone upon those discriminated against. It also may affect those, not themselves the victims of such discrimination, who grow up in a society where racial discrimination is common practice. Even after leaving that society, such individuals may continue to engage in and condone those discriminatory practices which are not only incompatable with national public policy, but in violation of the laws of California. Such conduct aggravates the difficult problems faced by state government, its courts of law and legal officers, in creating an atmosphere in which those laws will be respected and readily observed.

There is yet another manner in which the interests of our state, as well as the interests of the nation, are affected by the Civil Rights Act of 1964. The language of the Supreme Court of Colorado in passing upon the Colorado Fair Housing Act of 1959 is equally applicable to the Federal Civil Rights Act of 1964:

> "When, as at present, the entire world is engulfed in a struggle to determine whether the American concept of freedom with equality of opportunity shall survive; when tyrannical dictators arrayed against this nation in the struggle proclaim throughout the world, with some justifica-

> tion, that we do not practice what we preach, and that 'equality of opportunity' is a sham and a pretense, a hollow shell without substance in this nation; we would be blind to stark realities if we should hold that the public safety and the welfare of this nation were not being protected by the Act in question. Indeed, whether the struggle is won or lost might well depend upon the ability of our people to attain the objectives which the Act in question is designed to serve."[21]

For the foregoing reasons, we take this opportunity to express our accord with the philosophy of the Civil Rights Act of 1964, and recognize its passage as the necessary and proper exercise of the power of Congress over commerce among the several states.

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[21] *Colorado Anti-Discrimination Commission v. Case*, 380 P. 2d 34, 41-42 (Colo., 1962).

ARGUMENT.

The Public Accommodation Title of the Civil Rights Act of 1964 Is a Constitutional Exercise of the Power of Congress to Regulate Interstate Commerce.

The Public Accommodation Title of the Civil Rights Act of 1964 provides that:

> "All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in this section, without discrimination or segregation on the ground of race, color, religion, or national origin." Civil Rights Act of 1964, Section 201(a).

Places of public accommodation covered by the Act include any inn, hotel, motel, or other establishment which provides lodging to transient guests, and any facility principally engaged in selling food for consumption on the premises, which serves or offers to serve interstate travelers, or where a substantial portion of the food which it serves has moved in interstate commerce. Civil Rights Act of 1964, Section 201(b).

The Heart of Atlanta Motel is a Georgia corporation whose only place of business is in Atlanta, Fulton County, Georgia. [Complaint for Declaratory Judgment, R. 5.] The motel has 216 rooms for lease or hire to transient guests only. Approximately seventy-five per cent of the total number of guests who register at the motel are from outside the state of Georgia. [Stipulation of Facts, R. 17.]

Thus the Public Accommodation Title of the Civil Rights Act of 1964 clearly applies to appellant Heart

of Atlanta Motel. The question before this court is whether the Civil Rights Act of 1964, as applied to the Heart of Atlanta Motel, exceeds constitutional limitations on the exercise of federal power over interstate commerce.

The commerce power of the United States, more than any of the other powers conferred by the Constitution on our federal government, binds our nation together and makes of it an indivisible whole. None can gainsay that the use of this power and the activities reached through that use have expanded greatly since 1789. This has resulted not only from a changing interpretation of the commerce clause, but also from a drastic change in the nature of interstate commerce.

Most markedly during the past thirty years, history has forced Americans to the realization that the states which comprise our modern nation are bound inextricably together, and that no state can remain aloof. Events once considered matters of purely local concern can have drastic consequences for the commerce of other states.

A strike in California can deprive the citizens of New York of food for their tables. Dust storms in Oklahoma can drive tens of thousands of people to California for refuge. Harvests in Iowa affect farm prices in Illinois. Working conditions in Chicago affect the conditions of workers in competing firms in New York and San Francisco.

Similarly, racial discrimination in one state affects the commerce of other states and the rights of their citizens. The statement of the interest of the State of California in the Civil Rights Act of 1964 equally demonstrates the interest of Congress on behalf of the

entire nation. After exhaustive study, Congress determined that racial discrimination adversely affects interstate commerce. This determination may not be overturned unless clearly arbitrary and unreasonable.

Precedent for the exercise of the commerce power through the Public Accommodation Title of the Civil Rights Act of 1964 is ample and persuasive. This court has long recognized the legitimate federal interest in the conditions under which travelers pass among the several states and restrictions placed upon their travel. *Crandall v. Nevada*, 73 U. S. (6 Wall.) 35 (1867); *Mitchell v. United States*, 313 U. S. 80 (1941); *Morgan v. Virginia*, 328 U. S. 373 (1946); *United States v. Lassiter*, 203 F. Supp. 20 (W. D. La.) (*Per Curiam*), aff'd 371 U. S. 10 (1962).

Mitchell v. United States, supra, concerned the availability of Pullman accommodations. *Morgan v. Virginia, supra*, involved the burden placed on interstate bus passengers through state laws requiring segregated seating. Surely the difficulties encountered by automobile passengers in finding places of refreshment and rest on their interstate journeys impose a burden on interstate commerce as great as the unavailability of Pullman accommodations or the requirement that passengers change their seats on an interstate bus. Surely an act of Congress regulating interstate commerce requires greater respect than the requirements of the commerce clause in the absence of a federal statute.

It is true, of course, that the *Mitchell* and *Morgan* decisions involved interstate carriers already under federal regulation. But the automobile has displaced train and bus as the major means of passenger transportation, largely as a result of the expenditure of billions

of dollars of federal tax money on our interstate highway system. Places of public accommodation, both on and off the highway, are as essential to the interstate driver and his passengers as depot and terminal facilities are to rail and bus passengers, and the interstate traveler by air or rail may equally require such accommodation during the course of his journey.

It is no answer to assert that a place of public accommodation is "local" in character or "intrastate" in its operations, and thus lies beyond the congressional commerce power, where Congress has reasonably determined that its business affects commerce. Congress may lawfully regulate conditions and conduct in business establishments which either produce or receive goods which travel in interstate commerce. *Howell Chevrolet Co. v. NLRB*, 346 U. S. 482 (1953); *United States v. Sullivan*, 332 U. S. 689 (1947); *United States v. Darby*, 312 U. S. 100 (1941); *NLRB v. Jones & Laughlin Steel Corp.*, 301 U. S. 1 (1937); *McDermott v. Wisconsin*, 228 U. S. 115 (1912). Congressional power also extends to intrastate activities where regulation of the intrastate commerce is necessary to regulate or protect interstate commerce. *Wickard v. Filburn*, 317 U. S. 111 (1942); *Houston, E. & W. Texas Ry. v. United States*, 234 U. S. 342 (1914); *Maudeville Farms v. Sugar Co.*, 334 U. S. 219 (1948).

In determining the effect which places of public accommodation have upon interstate commerce, consideration cannot be limited to the particular place of public accommodation whose case is before this court.

In *Wickard v. Filburn, supra*, the court upheld the commerce power, exercised through the Agricultural Adjustment Act of 1938, to regulate a farmer who

sowed twenty-three acres of wheat entirely for his own consumption. The court said:

> "That appellee's own contribution to the demand for wheat may be trivial by itself is not enough to remove him from the scope of federal regulation where, as here, his contribution, taken together with that of many others similarly situated, is far from trivial." *Wickard v. Filburn, supra,* at pp. 127-28.

Similarly, in ruling on the jurisdiction of the National Labor Relations Board, this court has pointed out:

> "Whether or not practices may be deemed by Congress to affect interstate commerce is not to be determined by confining judgment to the quantitative effect of the activities immediately before the Board. Appropriate for judgment is the fact that the immediate situation is representative of many others throughout the country, the total incidence of which if left unchecked may well become far reaching in its harm to commerce." *NLRB v. Reliance Fuel Oil Corp.*, 371 U. S. 224, 226 (1963) (*Per curiam*).

Certainly this rule is equally applicable to a determination of the effects of racial discrimination in places of public accommodation. It was the cumulative effect of widespread patterns of segregation and discrimination, the manifestations of which have been continually before this court during the past ten years, which necessitated federal action through the Civil Rights Act of 1964.[22]

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[22]Report of the Committee on Commerce, United States Senate, *Civil Rights-Public Accommodations*, S. Rep. No. 872, 88th Congress, 2d Session, pp. 15-16 (1964).

Racial discrimination in places of public accommodation affects commerce among the states in yet another manner. In *NLRB v. Jones & Laughlin Steel Corp.*, 301 U. S. 1 (1937), this court recognized that the stoppage of commercial operations by industrial strife could have a serious effect on interstate commerce. Racial strife in various parts of the country can lead to forms of economic retaliation and coercion not unlike those which marked the labor struggles of the 1930's.[23] These, in turn, may curtail the flow of goods into California, or from California into other states, thereby affecting the commerce of our state and of the nation.

Congressional use of the commerce power in the Civil Rights Act of 1964 is neither novel nor alarming. Congress has frequently acted through its commerce power, not only to regulate commerce, but to promote the welfare and safety of the nation through regulating activities which affect commerce. See, *e.g., United States v. Darby*, 312 U. S. 100 (1941) (Fair Labor Standards Act); *NLRB v. Jones & Laughlin Steel Corp.*, 301 U. S. 1 (1937) (National Labor Relations Act); *Weeks v. United States*, 245 U. S. 618 (1918) (misbranding under Pure Food and Drug Act) *Caminetti v. United States*, 242 U. S. 470 (1917) (White Slave Traffic Act); *Hoke v. United States*, 227 U. S. 308 (1913) (White Slave Traffic Act); *Hipolite Egg Co. v. United States*, 220 U. S. 45 (1911) (Pure Food and Drug Act); *Champion v. Ames*, 188

[23] *Id.* at 8, 9, 19-20 (1964).

U. S. 321 (1903) (Anti-lottery law). Thus, where social injustices occur in commercial activities, the commerce power is a natural and familiar means for dealing with them.

Professor Paul Freund posed the question now before this court in his analysis of the Public Accommodation Title appended to the report of the Senate Committee on Commerce:

> "The question is whether the same power that has been used in the interest of preventing deception, disease, and immorality, as well as discrimination against members of unions and against small business, shall be utilized in the interest of preventing discrimination among patrons of establishments whose practices have repercussions throughout the land and which take advantage of the facilities of our national commercial market for their patronage or their supplies or both."[24]

The answer of Congress, of California, and of this court—founded in sound principles of constitutional law, and following the dictates of justice and the mandate of history—can only be yes.[25]

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[24] *Id.* at 87 (1964).

[25] Since—in the view we take of this case—the commerce power is clear, we do not address ourselves to the alternate sources of federal power to support the judgment against appellant Heart of Atlanta Motel.

The views expressed in this brief are equally applicable to the decision of the United States District Court for the Northern District of Alabama in *McClung v. Katzenbach*, Civ. No. 64-448, Sept. 17, 1964. We believe that decision was in error, and should be reversed by this Court.

Conclusion.

For the above reasons, the State of California submits that the Public Accommodation Title of the Civil Rights Act of 1964 is a constitutional exercise of the power of Congress to regulate interstate commerce. The State of California, therefore, prays that the judgment as entered below in the United States District Court for the Northern District of Georgia be affirmed, and appellant Heart of Atlanta Motel's appeal therefrom be denied.

Respectfully submitted,

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